

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARJAY VANCEACH,

Plaintiff,

-against-

NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK and TIMOTHY  
DENDY,

Defendants.

Civil Action No. 18-cv-09418 (ER)

**DECLARATION OF KELLY C. SPINA IN SUPPORT OF  
NATIONAL RAILROAD PASSENGER CORPORATION'S  
MOTION FOR DISCOVERY SANCTIONS**

Kelly C. Spina, Esq., under penalty of perjury, states as follows:

1. I am Of Counsel with the law firm of Littler Mendelson, P.C., attorneys for National Railroad Passenger Corporation ("Amtrak"). As such, I am fully familiar with the facts and circumstances set forth below. I submit this declaration in support of Amtrak's motion for discovery sanctions.

2. A true and accurate copy of 58 pages of text messages between Plaintiff and Defendant Timothy Dendy that Plaintiff provided to Amtrak before this litigation began is annexed hereto as Exhibit A.

3. A true and accurate copy of an Amtrak police report relating to Plaintiff's allegations against Dendy is annexed hereto as Exhibit B.

4. A true and accurate copy of Plaintiff's September 9, 2019 Rule 26 Initial Disclosures with attachments are annexed collectively hereto as Exhibit C.

5. A true and accurate copy of Plaintiff's September 12, 2019 supplemental Rule 26 Initial Disclosures with attachments are annexed collectively hereto as Exhibit D.

6. A true and accurate copy of the 158 pages of text messages Dendy produced in discovery, with highlights added by Amtrak counsel to reflect messages not produced by Plaintiff, is annexed hereto as Exhibit E.

7. A true and accurate copy of Plaintiff's responses to Amtrak's First Set of Interrogatories is annexed hereto as Exhibit F.

8. A true and accurate copy of Plaintiff's responses to Amtrak's First Set of Document Requests is annexed hereto as Exhibit G.

9. A true and accurate copy of Amtrak's November 18, 2019 discovery deficiency letter to Plaintiff's counsel is annexed hereto as Exhibit H.

10. A true and accurate copy of Plaintiff's April 30, 2020 response to Amtrak's November 18, 2019 discovery deficiency letter is annexed hereto as Exhibit I.

11. True and accurate copies of Plaintiff's May 1 and May 4, 2020 verifications of her discovery responses are annexed hereto as Exhibit J.

12. A true and accurate copy of Amtrak's June 1, 2020 discovery deficiency letter to Plaintiff's counsel is annexed hereto as Exhibit K.

13. A true and accurate copy of Plaintiff's June 14, 2020 "Supplemental Responses to Amtrak's Letter dated 6/1/2020 for Interrogatories and Documents" is annexed hereto as Exhibit L.

14. A true and accurate copy Plaintiff's handwritten statement to Amtrak, produced in

discovery at AMTRAK (VANCEAH) 0000531-536, is attached hereto as Exhibit M.

15. On June 23, 2020, Plaintiff's counsel forwarded a series of emails to Amtrak's counsel with links to documents stored in a Google Drive. The emails contained no description of the production beyond the titles of the linked files. One such file was entitled "Picture of Denty's Penis005597.pdf." The link led to a.pdf copy of a photo of a penis, with no identifying data. Plaintiff also produced two files of texts entitled as relating to overtime, but without the sender(s) or recipient(s) identified.

16. A true and accurate copy of Amtrak's July 10, 2020 discovery deficiency letter to Plaintiff's counsel is annexed hereto as Exhibit N.

17. A true and accurate copy of Plaintiff's July 29, 2020 response to Amtrak's July 10, 2020 discovery deficiency letter is annexed hereto as Exhibit O.

18. A true and accurate copy of the transcript of a Telephone Discovery Hearing held on September 18, 2020 is annexed hereto as Exhibit P.

19. A true and accurate copy of an affidavit Plaintiff executed on September 30, 2020 is annexed hereto as Exhibit Q.

20. A true and accurate copy of a second affidavit Plaintiff executed on September 30, 2020 is annexed hereto as Exhibit R.

21. A true and accurate copy of the relevant portions of the transcripts of Plaintiff's deposition (Days 1 through 4) are annexed hereto as Exhibit S.

22. A true and accurate copy of the transcript of a Telephone Discovery Hearing held on December 4, 2020 is annexed hereto as Exhibit T.

23. Following this Court's order that Plaintiff submit her telephones for forensic analysis, Amtrak arranged for a vendor, Consilio, to perform a forensic analysis of Plaintiff's

phones and upload the results to a database where counsel for all parties are able to review them. Per the Court's order, two phones were examined: Plaintiff's "personal" phone with a 323 area code (the "323 phone"), and her "business" phone with a 908 area code (the "908 phone"). Undeleted and retrievable deleted data was examined.

24. The forensic analysis showed that the 908 phone has been in use only since January 2020. Although texts produced by Dendy show Plaintiff used the 908 number to communicate with him during the relevant time period, no record of those communications is on her current 908 phone. Although Plaintiff produced in discovery text messages between herself and Dendy spanning only from January 1–4, 2018, the 323 phone contains undeleted texts between them spanning from December 14, 2107 to February 2, 2018, on at least 19 separate days, which she did not produce in discovery. In addition, contrary to her deposition testimony, Plaintiff and "Dougie" exchanged hundreds of personal text messages. Finally, the photo Dendy allegedly sent Plaintiff is not on either phone, and the forensic analysis did not reveal any evidence that it ever was.

25. A true and accurate copy of the transcript of a Telephone Discovery Hearing held on September 9, 2021 is annexed hereto as Exhibit U.

26. A true and accurate copy of Plaintiff's September 20, 2021 letter claiming to have located electronics store owner Riad is annexed hereto as Exhibit V.

27. A true and accurate copy of the relevant portions of the transcripts of Joshua Rondau's deposition is annexed hereto as Exhibit W.

28. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 23, 2021  
Melville, New York

*s/ Kelly C. Spina*  
Kelly C. Spina